

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
ANDREW TORO, *on behalf of himself and all others* :
similarly situated, :
:

Plaintiff, :

-v- :

CHOICE PET FOOD DISTRIBUTORS, INC., :

Defendant. :
:
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23 Civ. 3104 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

This case has been assigned to the undersigned for all purposes. **All counsel must familiarize themselves with the Court’s Individual Rules, which are available at <https://www.nysd.uscourts.gov/hon-john-p-cronan>.** Counsel for all parties are hereby ORDERED to appear before the undersigned for an Initial Pretrial Conference (“IPTC”) in accordance with Rule 16 of the Federal Rules of Civil Procedure November 2, 2023, at 1:30 p.m. via telephone. At the scheduled time, counsel for all parties should call (866) 434-5269, access code 9176261. Absent leave of Court obtained by letter-motion filed before the conference, all pretrial conferences must be attended by the attorney who will serve as principal trial counsel.

The parties should be prepared to discuss their views on whether Plaintiff has statutory standing to bring his claims. *See, e.g., Winegard v. Newsday LLC*, 556 F. Supp. 3d 173, 174 (E.D.N.Y. 2021) (“[T]he ADA excludes, by its plain language, the websites of businesses with no public-facing, physical retail operations from the definition of ‘public accommodations.’”); *Martinez v. MyLife.com, Inc.*, No. 21 Civ. 4779 (BMC), 2021 WL 5052745, at *2-3 (E.D.N.Y. Nov. 1, 2021) (same); *Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1277 (11th Cir. 2021) (“[W]ebsites

are not a place of public accommodation under Title III of the ADA.”), *opinion vacated on mootness grounds on panel reh’g*, 2021 WL 6129128 (11th Cir. Dec. 28, 2021); *see also U.S. Nat’l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 447 (1993) (“[A] court may consider an issue antecedent to and ultimately dispositive of the dispute before it, even an issue the parties fail to identify and brief.” (quotations and alterations omitted)). The parties also shall be prepared to discuss their views on whether Plaintiff has Article III standing to bring his claims under Title III of the Americans with Disabilities Act, 43 U.S.C. §§ 12101 *et seq.*, in light of the Second Circuit’s recent decision in *Calcano v. Swarovski North America Ltd.*, 36 F.4th 68 (2d Cir. 2022).

Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at the IPTC. No later than seven days prior to the IPTC, it is further ORDERED that the parties shall submit a joint letter, not to exceed five (5) pages, addressing the following in separate paragraphs:

- (1) A brief statement of the nature of the action and the principal defenses thereto;
- (2) A brief explanation of why jurisdiction and venue lie in this Court;
- (3) A brief description of all outstanding motions and/or all outstanding requests to file motions;
- (4) A brief description of any discovery that has already taken place, and that which will be necessary for the parties to engage in meaningful settlement negotiations;
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

By that date, the parties shall also submit to the Court a proposed case management plan and scheduling order, a template of which is available at <https://www.nysd.uscourts.gov/hon-john-p-cronan>.

If this case has been settled or otherwise terminated, counsel are not required to submit

such letter or to appear, provided that a stipulation of discontinuance, voluntary dismissal, or other proof of termination is filed on the docket prior to the joint letter submission deadline, using the appropriate ECF Filing Event. *See* SDNY ECF Rules & Instructions §§ 13.17-13.20, *available at* <https://nysd.uscourts.gov/rules/ecf-related-instructions>. In accordance with the Court's Individual Rules and Practices for Civil Cases, requests for extensions or adjournment may be made only by letter-motion filed on ECF and must be received at least 48 hours (*i.e.*, two business days) before the deadline or scheduled appearance, absent compelling circumstances. The written submission must state (1) the original date(s) set for the appearance or deadline(s) and the new date(s) requested; (2) the reason(s) for the request; (3) the number of previous requests for adjournment or extension; (4) whether these previous requests were granted or denied; and (5) whether opposing counsel consents, and, if not, the reasons given by opposing counsel for refusing to consent.

Counsel who have noticed an appearance as of the issuance of this order are directed to notify all other parties' attorneys in this action by serving upon each of them a copy of this order and the Court's Individual Rules (available at the Court's website, <https://www.nysd.uscourts.gov/hon-john-p-cronan>) forthwith. If unaware of the identity of counsel for any of the parties, counsel receiving this order must forthwith send a copy of this order and Individual Rules to that party personally.

SO ORDERED.

Dated: October 17, 2023
New York, New York



JOHN P. CRONAN
United States District Judge